IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

WP(C).No. 30992 of 2005(M)

PETITIONERS:

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1. **K.V. NARAYANAN,**
   PRESIDENT, HOSDURG PRIMARY CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK, KANHANGAD, KASARAGOD.

2. **THE HOSDURG PRIMARY CO-OPERATIVE AGRL. AND RURAL DEVELOPMENT BANK, HOSDURG, REPRESENTED BY ITS SECRETARY IN-CHARGE.**

BY ADV. SRI.V.G.ARUN.

RESPONDENTS:

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1. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO GOVT., CO-OPERATION DEPARTMENT, TRIVANDRUM.

2. **THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KASARAGOD.**

3. **K. PADMANABHAN,**
   RESIDING AT RAILWAY STATION ROAD, KUTTAMATH, CHERUVATHUR, KASARAGOD.

BY ADV. SRI.ELVIN PETER P.J.
SR. GOVERNMENT PLEADER SRI. P.K. RAVIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.30992/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PROCEEDINGS OF THE PRESIDENT NO. 2/99 DTD. 10/07/2000.

EXT.P.2: COPY OF THE ORDER NO. 4205/2000/CRP. DTD. 24/10/2000.

EXT.P.3: COPY OF THE JUDGMENT IN W.P.(C). NO. 25006/2003 DTD. 04/03/04.

EXT.P.4: COPY OF THE LETTER NO. 2/99 DTD. 13/03/2004.

EXT.P.4.A: COPY OF THE REPLY BY THE R.3. DD. 22/03/2004.

EXT.P.5: COPY OF THE DEPOSITION BY THE R.3. DT. 24/03/2004.

EXT.P.6: COPY OF THE PROCEEDINGS OF THE SUB COMMITTEE IN MEMO 2/99 DTD. 06/04/2004.

EXT.P.6.A: COPY OF THE REPLY BY THE R.3. DT. 17/04/2004.

EXT.P.7: COPY OF THE PROCEEDINGS OF THE SUB COMMITTEE IN MEMO NO. 2/99 DTD. 26/04/2004.

EXT.P.8: COPY OF THE JUDGMENT IN W.A. 1088/2004 DT. 26/07/2004.

EXT.P.9: COPY OF THE STATEMENT FILED BY THE PETITIONERS IN CRB 3023/2004 DTD. 07/09/2004.

EXT.P.10: COPY OF THE ARGUMENT NOTES FILED BY THE BANK IN CRB.3023/04 DTD. 10/09/2004.

EXT.P.11: COPY OF THE ORDER NO. CRB/3023/2004 DTD. 14/09/2004.

EXT.P.12: COPY OF THE APPEAL MEMO FILED BEFORE THE GOVT. BY THE PETITIONERS DTD. 17/09/2004.

EXT.P.13: COPY OF THE STAY PETITION FILED IN THE APPEAL DTD. 17/09/2004.

EXT.P.14: COPY OF THE ORDER NO. 10568/C3/04/CO-OP. DTD. 06/10/04.

EXT.P.15: COPY OF THE LETTER DTD. 15/10/2004 ISSUED BY THE PETITIONER.

EXT.P.16: COPY OF THE JUDGMENT IN W.P.(C). NO. 27789/2004 DTD. 27/06/2005.

EXT.P.17: COPY OF THE ORDER G.O. RT. NO. 604/2005/CO-OP. DTD. 20/10/2005.

W.P.(C). NO.30992/2005:

RESPONDENT'S EXHIBITS:

EXT.R3.A: COPY OF THE CERTIFICATE DTD. 23/08/1999 ISSUED BY THE VILLAGE OFFICER, KAYYUR.

EXT.R3.B: COPY OF THE UTILISATION CERTIFICATE DTD. 24/03/1997 ISSUED BY THE R.3.

EXT.R3.C: COPY OF THE CERTIFICATE ISSUED BY THE ASSISTANT ENGINEER, PWD NILESHWAR.

EXT.R3.D: COPY OF THE MEMO OF CHARGES DTD. 03/11/1999 ISSUED TO THE R.3.

EXT.R3.E: COPY OF THE MEMO OF CHARGES ISSUED TO THE R.3.

EXT.R3.F: COPY OF THE ORDER DTD. 24/12/1995 ISSUED BY THE PRESIDENT OF THE BANK TO THE R.3.

EXT.R3.G: COPY OF THE COMMUNICATION DTD. 26/12/1995 ISSUED TO THE R.3. BY THE BANK.

EXT.R3.H: COPY OF THE ORDER DTD. 07/07/2004 ISSUED BY THE R.2.

EXT.R3.I: COPY OF THE ORDER DTD. 16/07/2003 ISSUED BY THE GOVERNMENT.

EXT.R3.J: COPY OF THE ORDER DTD. 06/04/2004 PASSED BY THE SUB COMMITTEE OF THE SOCIETY.

EXT.R3.K: COPY OF THE JUDGMENT DTD. 26/07/2004 IN W.A. NO. 1088/2004.

EXT.R3.L: COPY OF THE REPRESENTATION DTD. 24/03/2004 SUBMITTED BY THE R.3. TO THE P.2.

//TRUE COPY//

prv.

S.SIRI JAGAN, J.

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W.P.(C).No.30992 of 2005

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Dated this the 23rd day of March, 2007

J U D G M E N T

The petitioners herein are the President of the Hosdurg Primary Co-operative Agricultural and Rural Development Bank and the Bank itself. They are challenging Exts.P11 and P17 orders in this writ petition. Ext.P11 order is one passed by the 2nd respondent-Joint Registrar in exercise of his powers under Rule 176 of the Kerala Co-operative Societies Rules setting aside the disciplinary proceedings against the third respondent. Ext.P17 order is the order passed by the 1st respondent Government in appeal against Ext.P11 order. The primary contention of the petitioners is that the 2nd respondent-Joint Registrar does not have jurisdiction to interfere with the disciplinary proceedings in exercise of his powers under Rule 176 of the Rules, particularly after the amendment to

Section 69 incorporating sub section 2(d) thereof making a dispute in connection with the employment of officers and servants of the co-operative societies also a dispute which can be raised before the Arbitration Court under Section 69. Another contention raised by the petitioners is that what has been set aside by the 2nd respondent by Ext.P.11 is only proceedings of the sub committee in disciplinary proceedings. According to them, the 2nd respondent had powers only to rescind the resolution passed by the society, that too, provided the conditions in Rule 176 are satisfied, even if notwithstanding section 69(2)(d) proceedings under section 176 are maintainable before the 2nd respondent. The third contention is that even if Ext.P11 is accepted as correct, the Joint Registrar ought not to have stopped at setting aside the disciplinary proceedings since in respect of the enquiry proceedings there is no finding that the same are in any way vitiated. That being so, according to the counsel for the

petitioners, the matter should have been directed to be considered afresh by the sub committee in accordance with the provisions of the Kerala Co-operative Societies Rules.

2. In answer to the said contentions, the counsel for the third respondent points out that the first contention is no longer available to the petitioners in view of Ext.R3(k) decision of the Division Bench in the same matter. Earlier when the 2nd respondent refused to entertain the third respondent's petition under Rule 176 on the ground that he has no jurisdiction to do so, the 3rd respondent has filed an appeal before the Government in which the Government had directed the society to reinstate the petitioner with back wages which was challenged by the petitioners in W.P(C). No.25006/2003, against the judgment in which, the 3rd respondent filed W.A.No.1088/2004, in which Ext.R3(k) judgment has been passed. It is pursuant to the direction in that judgment that the petitioners have again filed petition under Section

176, which only had been disposed of by the 2nd respondent by Ext.P11 order. Therefore, the counsel for the third respondent would submit that the first contention is no longer available to the petitioners. In this respect I find considerable merit in the contention of the third respondent. Ext.R3(k) reads as follows:-

> "In compliance with the directions of the learned single Judge, the Sub Committee of the 2nd respondent Bank has considered the matter afresh and passed a final order in the disciplinary action initiated as per Ext.P3 charge-sheet. Still the writ appellant-3rd respondent has a case that his request to grant him time to properly place his case before the Sub Committee was arbitrarily rejected. Necessarily, this is a sufficient ground for him to impugn the order passed by the Sub Committee or the Board as the case may be before the Joint Registrar. If the appellant files a petition under Rule 176 of the Kerala Co-operative Societies Rules before the Joint Registrar impugning the order passed consequent to the judgment of the learned single Judge, the Joint Registrar shall consider the same and pass orders with due notice to the Bank and the appellant within six weeks from the date of receipt of such petition."

From the above it is evident that rightly or wrongly the Division Bench had in fact directed the 2nd respondent to exercise its jurisdiction under Rule 176 to consider the petition to be filed by the petitioner as directed by the Division Bench.

That being so, I do not think that the petitioners can now contend that a petition under Section 176 would not lie in this matter.

3. The second and third contentions can be considered together. It is true that an appeal is provided against the order of the sub committee before the managing committee of the bank. The petitioners have not chosen to file an appeal. Further, in Ext.P11 order there is no finding that the enquiry proceedings are in any way vitiated. The finding is only to the effect that the proceedings of the sub committee are not in accordance with law. That being so, while rescinding the decision of the sub committee, the 2nd respondent ought to have permitted the petitioners to continue the proceedings afresh from the stage of directing the third respondent to file objections to the notice regarding the findings of the enquiry officer and proposed punishment. To this extent, I am satisfied that the 2nd respondent has gone wrong. Therefore, while confirming the

findings in Ext.P11, I set aside Exts.P11 and P17 orders to the extent it do not give opportunity to the petitioners to continue the proceedings afresh from the stage of consideration by the sub committee, which alone has been found to be vitiated by the 2nd respondent. Accordingly, this writ petition is disposed of with the following directions:

It is submitted by both parties that a notice inviting objections to the enquiry report has been issued to the third respondent subsequent to the impugned order. The third respondent shall file explanation to the said notice within three weeks from the date of receipt of a copy of this judgment. If the third respondent applies for opportunity to peruse the enquiry proceedings the petitioners shall give the third respondent adequate opportunity to peruse the same. On receipt of the explanation filed by the third respondent, the sub committee of the 2nd respondent shall consider the matter and pass a reasoned order

accepting or rejecting the enquiry report. If the sub committee decides to accept the enquiry report, the 3rd respondent shall further be given a notice to show cause against the proposed punishment to be imposed on him. The 3rd respondent shall be given not less than two weeks' time to file his explanation to such a notice. After receipt of such explanation, the sub committee shall pass final orders regarding the punishment to be imposed on the 3rd respondent in accordance with law within a period of two weeks thereafter. If the decision of the sub committee is against the 3rd respondent, the 3rd respondent would be free to file appeal before the managing committee after exercising which remedy alone, the third respondent can further take up the matter before other appropriate statutory authorities as provided under law.

Writ petition is disposed of as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.